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EXAMINER

MOORE, KARLA A

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Applicant has requested reconsideration in light of the following arguments presented in the remarks submitted 21 January 2011:

- a) the structure 46 and 54 of Derbinsky relied upon as reading on being movable is improperly relied upon based on a unreasonable interpretation of the claim language
- b) the structure designated by 46 and 54 in Derbinsky can not be considered a housing halves alone
- c) the structure designated by 46 and 54 in Derbinsky is not explicitly disclosed as movable to prevent rotation or movable to open as seal (as opposed to movable to close a seal)
- d) the gasket of Nishida cannot be considered to be a sealing member with a joining effect; nor would one of ordinary skill in the art be motivated to provide a gasket to seal two abutting parts if it were not for Applicant's specification

Examiner offers the following remarks in response:

- a) Based on Examiner's understanding of the disclosed invention that the housing halves each include not only an outermost cover member as well as the structure provided therein for performing treatment, etc., Examiner does not believe the presently applied interpretation is unreasonable. However, it may be considered to be broad. Examiner agrees with the Applicant that during patent examination, the pending claims must be "given the broadest reasonable interpretation consistent with the specification." In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). However, in the instant case, none of Applicant's specification, drawings or claims necessitate that the "moving" action in dispute be attributed to the outermost cover member of the housing halves, as opposed to any other part of the housing half that is movable and capable of contacting the revolver as claimed, as Applicant argues is the only reasonable interpretation. What is necessitated by the claims is that a "moving action" brings the housing halves in contact with the revolver. This is readable on moving structure 46 and 54, which are each part of respective housing halves in contact with a revolver. Examiner does not dispute Applicant's contention that in *the non-limiting example of Figure 2* (by Applicant's own admission) the "moving action" is by an outermost cover member of the housing half, but Examiner also does not believe that this non-limiting example is the only way the claims can be interpreted. The courts have ruled that although the claims are interpreted in light of the specification, limitations from the specification are not read into the

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claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant has argued that moving part of the object is not the same as moving an entire object. Examiner does not refute contention, but does point out that the claim at issue does not require movement of an entire housing half. Regarding Applicant's real-life example of opening the door of a car not being readable moving a car, this does not appear to be a fair comparison as the "action" in each instance is not the same.

Examiner would inquire whether or not the action of opening a window of a car would be readable on opening a car. While one may have intend to have opening read on opening the car by opening the trunk, opening a door (or a plurality or even all) or even unlocking the doors, can't it be said that opening a window of the car is in effect opening the car. Examiner believes the answer is yes. Another situation that exemplifies the broadness of saying that something is "movable" is movement of a structure that involves a telescoping movement. The structure would correctly be considered "moved" if any part was moved. However, not necessarily all of the structure would be moved.

b) Examiner does not consider the structures 46 and 54 to constitute housing halves alone

c) Although it may be possible that Derbinsky never explicitly states that force is "applied" by the force-generating member, rather than "removed" by the force generating member in an movement of the housing halves, each are considered "actions" of the force generating member readable on the claim limitation(s) at issue. Further, in response to Applicant's argument that there is no discussion in Derbinsky that movement is provided to prevent/permit rotation, it is noted that the courts have ruled that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

d) First, Examiner points out that Nishida is relied upon to supplement the teachings of Derbinsky. As such, there is no point in discussing features which are not found in Nishida, but are found in the disclosure of Derbinsky and are rejected based on the Derbinsky disclosure. Second, Examiner would point out that by definition a gasket provided between to abutting parts does have a sealing and joining effect. Third, Examiner would submit that given this definition, one of ordinary skill in the art (or maybe

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even perhaps without such skill) would not need Applicant's specification in order to consider using a gasket for its intended purpose.

For at least the above reasons the rejections set forth in the Final Rejection are maintained.

Applicant's attorney did not call the Examiner to schedule and interview. Therefore, as requested in the After Final Submission, Examiner contacted Applicant's Attorney to schedule an interview. Specifically, on 3 Feb 2011, Examiner left a message with a receptionist requesting to speak with John Castellano and mentioned that that request was time-sensitive. The phone call was never returned.

/Karla Moore/

Primary Examiner, Art Unit 1716